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Supreme Court of the United States

OCTOBER TERM, 1937

No. 57

STATE OF MISSOURI EX REL. LLOYD L. GAINES,
Petitioner,

vs.

S. W. CANADA, Registrar of the University of Missouri, and
THE CURATORS OF THE UNIVERSITY OF MISSOURI,
a Body Corporate,
Respondents

SUPPLEMENTAL LIST OF AUTHORITIES FOR PETITIONER

CHARLES H. HOUSTON,
SIDNEY R. REDMOND,
HENRY D. ESPY,
Attorneys for Petitioner.

Of Counsel:

LEON A. RANSOM.
THURGOOD MARSHALL.
EDWARD P. LOVETT.

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SUPPLEMENTAL AUTHORITIES FOR THE PETITIONER

POINT I (Brief, p. 17)

The State of Missouri Denied Petitioner the Equal Protection of the Laws in Excluding Him from the School of Law of the University of Missouri Solely Because He Is a Negro.

Citizen and taxpayer has a proprietary interest in state-supported educational institutions.

Wright v. Board of Education, 295 Mo. 466, 246 S. W. 43 (1922).

POINT II (Brief, p. 18)

The Facilities Afforded Petitioner Under the Lincoln University Act of 1931 to Study Law Are Not Substantially Equal to the Facilities Afforded White and Other Non-Negro Students by the State in the School of Law of the University of Missouri.

The policy of the Missouri Law Review indicates the University of Missouri School of Law is a local law school emphasizing Missouri law.

1 Mo. Law Rev. 61 (1936).

2 Mo. Law Rev. 64 (1937).

POINT III (Brief, p. 21)

The Registrar and Curators of the University of Missouri Failed to Establish That the State Had Afforded Petitioner the Equal Protection of the Laws in the Face of Excluding Him from the School of Law of the University of Missouri Solely Because of His Race or Color.

Burden of proof is determined by considerations of policy and fairness.

5 Wigmore, Evidence (2d ed.), Sec. 2486.

2 Jones, Evidence (2d ed.), Secs. 485-487, 494-495.

Wright-Blodgett Co. v. U. S., 236 U. S. 397 (1915).

(The citation on page 21, Petitioner's Brief, of *Jones, Evidence (2d ed.)*, Sec. 181, is incorrect and should be ignored.)

The burden of proof, as distinguished from the burden of going forward is a matter of substantive law.

Central Vermont Ry. Co. v. White, 238 U. S. 507 (1915).

A prima facie case of discrimination is made out under all the authorities on a mere showing of exclusion of Negroes from a public function solely because of race.

See *Norris v. Alabama*, 294 U. S. 587 (1935).

POINT IV (Brief, p. 22)

Mandamus Against the Registrar and the Curators of the University of Missouri Was the Proper Remedy for the Protection of Petitioner's Constitutional Rights.

There was no necessity of a prior demand on the board of curators of Lincoln University to inaugurate a law school or legal education at Lincoln University: respondents confess such would have been futile (see Respondents' Brief, p. 53).

Montana Nat. Bank v. Yellowstone County, 276 U. S. 499 (1928).

Mandamus lies for the performance of a ministerial duty.

Piper v. Big Pine School Dist., 193 Cal. 664, 226 P. 926 (1924).

CORRECTION (Brief, p. 35)

The Virginia Scholarship Law, Acts of 1936, Ch. 352, has been amended by Acts of 1938, Ch. 125.

Acts of Assembly, Virginia, 1938, C. 125:

1. Be it enacted by the General Assembly of Virginia, That an act entitled "An act to provide equal educational facilities for certain persons denied admission to Virginia State colleges, universities and institutions of higher learning" approved March twenty-seventh, nineteen hundred and thirty-six be amended and re-enacted so as to read as follows:

"Section 1. Whenever any bona fide resident and citizen of this State, regardless of race, possessing the

qualifications of health, character, ability and preparatory education customarily required for admission to any Virginia State college, State university, or other State institution of higher learning and education, or any branch or department thereof, upon application, is denied admission thereto, for any reason, by the board which constitutes the governing authority of such institution, if it appear to the satisfaction of the State Board of Education that such person is unable to obtain from another such or similar Virginia State college, State university, or State institution, educational facilities equal to those applied for, and that such educational facilities can be provided and furnished to said applicant by a college, university or institution not operated as an agency or institution of the State, whether such other facilities are located in Virginia or elsewhere, the State Board of Education is hereby authorized, out of the funds appropriated for such purpose, to pay to such person, or the institution attended by him, as and when needed, such sum, if any, as may be necessary to supplement the amount which it would cost such person to attend the said State college, university or institution, so that such person will be enabled to secure such equal educational facilities elsewhere without additional cost to such person. In determining the comparative costs of attending the said respective institutions, the State Board of Education shall take into consideration, tuition charges, living expenses and costs of transportation.

"Section 2. Whenever any person has been denied admission to any Virginia State college, State university, or other State institution of higher learning and education, or any branch or department thereof, if such person possesses the qualifications, health, character, ability and preparatory education customarily required for admission there, the president of such institution, or a dean or department head designated by the president for that purpose, shall issue a certificate addressed to the State Board of Education certifying the fact of the applicant's denial of admission and his qualification for admission and forward same to the State Board of Education. The said certificate shall be prima facie evidence of the facts therein stated. Nothing in said

certificate contained, however, shall prevent the State Board of Education from making such further investigation of any application for money to provide equal educational facilities as the said Board of Education may deem proper."

Respectfully submitted,

● CHARLES H. HOUSTON,
● SIDNEY R. REDMOND,
● HENRY D. ESPY,

Attorneys for Petitioner.

Of Counsel:

LEON A. RANSOM.

THURGOOD MARSHALL.

EDWARD P. LOVETT.